

CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU
City Attorney

OFFICE OF THE CITY ATTORNEY

TARA M. STEELEY
Deputy City Attorney

Direct Dial: (415) 554-4655
Email: tara.steeley@sfcityatty.org

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VIA EMAIL

jacob.rossman@hhs.gov
jacob.richards@hhs.gov

Jacob Rossman
Assistant Regional Counsel, Region IX
Office of the General Counsel
Department of Health & Human Services
90 Seventh Street, Suite 4-500
San Francisco, CA 94103-6705

Jacob Richards
Assistant Regional Counsel, Region IX
Office of the General Counsel
Department of Health and Human Services
90 Seventh Street, Suite 4-500
San Francisco, CA 94103-6705

Re: *CCSF v. United States Department of Health and Human Services, et al*
United States District Court Case No. 3:22-cv-04500-WHA
Request to Continue the Pause on Transfers and Discharges of Residents at
Laguna Honda Hospital and Rehabilitation Center

Dear Counsel:

Under paragraphs 7 and 14 of the Settlement Agreement, we write to request that Centers for Medicare & Medicaid Services (CMS) exercise its discretion to continue the pause on transfers and discharges at Laguna Honda Hospital & Rehabilitation Center D/P SNF, Provider number 555020 (LHH). As you know, transfers and discharges are currently paused, but are scheduled to resume on February 2, 2023, unless CMS provides notice in writing that resident transfers and discharges may be resumed at a later date. LHH requests that CMS continue the pause on transfers and discharges until at least May 30, 2023, with the possibility of continuing the pause after that date based on LHH's progress towards recertification in the Medicare and Medicaid programs. Alternatively, LHH requests that CMS participate in the meet-and-confer and dispute escalation procedures as set forth in Paragraph 5 of the Settlement Agreement, so that the parties can discuss extending the pause on transfers and discharges.

In the event CMS extends the pause, LHH proposes that it would still be able to move forward with the discharge process for the two following categories of LHH residents: (1) residents who no longer meet skilled nursing criteria; and, (2) consistent with new CMS Phase 3 guidelines, residents who, despite the documented required care interventions, present a danger

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to other residents and the institution, are unable to have their needs met at LHH, and require placement in a different setting outside of LHH. These types of discharges would occur even if the facility were not subject to the facility closure process and thus constitutes discharges “for reasons unrelated to the Revised Closure Plan,” as allowed under paragraph 7 of the Settlement Agreement.

LHH has satisfied its milestone obligations under the Settlement Agreement, has successfully implemented many improvements in care, is making progress in addressing remaining issues, and is well on its way toward recertification.

The Settlement Agreement states that CMS will consider a pause on transfers and discharges if LHH is complying with its obligations under the Settlement Agreement. LHH has timely met its obligations under the Settlement Agreement, including by:

- Appointing Health Services Advisory Group, Inc. (HSAG) to serve as LHH’s Quality Improvement Expert (QIE).
- Submitting a Plan of Correction for the April 2022 survey.
- Submitting a Root Cause Analysis, which CMS approved on December 12, 2022.
- Submitting an Action Plan to correct issues identified in the Root Cause Analysis.
- Submitting a Revised Closure Plan.
- Assisting in the completion of the First Monitoring Survey.

Laguna Honda takes seriously its obligations under the Settlement Agreement and will continue to comply with the Agreement.

LHH is also well on its way to obtaining recertification. Following decertification in April 2022, LHH engaged two consultant firms to advise it on industry best practices used in high-performing healthcare facilities, as well as specific competencies necessary to improve skilled nursing care. LHH also activated the Hospital Incident Command System (HICS) to bring additional departmental resources to bear on addressing the deficiencies identified by CMS. LHH brought in a new interim CEO, appointed two individuals as CMS Recertification Co-Incident Commanders, and implemented daily meetings with stakeholders from LHH and the San Francisco Health Network to review and monitor the facility’s progress in real time.

The Root Cause Analysis identified the reasons behind LHH’s decertification and highlighted eight areas that LHH needs to address to ensure that it will come into compliance with federal conditions of participation and sustain compliance for the long term. The eight key areas concern: 1) Quality Assurance and Performance Improvement (QAPI); 2) Infection Prevention and Control (IPC); 3) Behavioral Health and Substance Use; 4) Medication Management and Administration; 5) Resident Rights and Freedom from Harm; 6) Comprehensive Care Plans and Quality of Care; 7) Competent Staff, Training, and Quality of Care; and 8) Emergency Preparedness Program.

In consultation with its QIE, LHH has developed a robust and comprehensive Action Plan to address each of those issues. Once fully implemented, the Action Plan will make wide-ranging changes at LHH to address all prior deficiencies and ensure lasting compliance with federal requirements. LHH has already implemented some items from the Action Plan including:

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- **Quality Assurance and Performance Improvement (QAPI):** LHH has already initiated improvements that strengthen the QAPI program, including launching a nursing huddle board program to discuss neighborhood-specific issues related to CMS recertification with frontline staff, suggest potential solutions, and implement these solutions as a team. All neighborhood nursing team members are required to attend daily huddles. All Resident Care Team members are required to attend huddles on their assigned unit each day. Nursing Directors are required to attend a minimum of one huddle in each of their neighborhoods per week. LHH also held interdisciplinary plan of correction “summits” which included unit leadership down to the front-line staff.
- **Infection Prevention and Control (IPC):** LHH has already initiated improvements that strengthen the IPC program, including changing the reporting structure so that the IPC team reports to the Chief Nursing Officer and is therefore better integrated with the nursing department and the 13 resident neighborhoods. Also, LHH brought on six IPC registry staff who round on all units every shift, seven days a week, to monitor practices, provide support to staff, and ensure that staff follow proper protocols. During the IPC rounds, the IPC staff identify issues related to PPE, hand hygiene, or any other relevant IPC practice. They then share observations and teach staff in real time using adult learning techniques, such as teach back, and then report the issues to the Charge Nurse to share the teachings and observations with a broader audience. This escalation allows the leadership to look for trends and to further educate the staff on the unit.
- **Behavioral Health & Substance Use Disorder:** LHH has already initiated improvements that strengthen support for residents with behavioral health and Substance Use Disorder (SUD) care needs, including preparing to launch a Behavioral Emergency Response Team (BERT) comprised of staff with long-term care and behavioral health experience. The BERT team will work with residents who have a Behavioral Management Plan from the LHH Psychiatric Department. BERT will visit with these residents, attend the Resident Care Councils, audit behavioral documentation in LHH’s electronic health record system, and educate staff on documentation compliance and individualized behavioral interventions. They will also provide post-intervention recommendations to staff for self-care, culturally appropriate, non-violent crisis intervention training, and individualized de-escalation techniques, while collaborating with multidisciplinary staff to ensure a consistent response from resident care teams. In addition, BERT will facilitate the working relationship between the Psychiatric Department and front-line nursing staff.
- **Medication Management & Administration:** LHH has already initiated improvements that strengthen medication management and administration, including increasing by 22% the number of oral liquid medications available in unit dose packaging, to reduce administration errors. The facility anticipates a total increase of 39% in the next three months. LHH has also significantly increased the number of pharmacist medication pass observations. In 2021, pharmacists completed nine medication pass observations. Starting in September 2022, they began to do 34 observations per quarter, which is a 16-

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fold increase. In addition to the new baseline of 34 observations, they worked with the LHH quality management (QM) team and consultants to complete an additional 34 observations between July and November 2022.

- **Residents Rights and Freedom from Harm:** LHH has already initiated improvements that support resident rights, including educating all staff on the grievance process to ensure grievance forms are readily accessible and residents and families have the support they need to complete them. In addition, since September 2022, staff educated residents during community meetings about their right to file grievances. These efforts have resulted in a significant increase in the number of grievances filed: more grievances were filed in July through December 2022 (36 grievances) than in all of FY 2021-22 (33 grievances).
- **Comprehensive Care Plans & Quality of Care:** LHH has already initiated improvements that strengthen comprehensive care plans and quality of care, including transitioning the Minimum Data Set (MDS) team to the Department of Care Coordination (DOCC) reporting to the Chief Nursing Officer. This provides strategic alignment within the DOCC of four distinct components that perform clinical assessments: Patient Flow Program, Utilization Management Department, Social Services Department, and Resident Assessment-Minimum Data Set (MDS), which will drive improved coordination, direction, and education around clinical assessment compliance with skilled nursing facility regulations.
- **Competent Staff, Training, and Quality of Care:** LHH has already initiated improvements that strengthen staff training and quality of care, including joining the California Association of Healthcare Facilities (CAHF) and having leaders join their appropriate leadership academies. Additionally, for the first time ever, six staff at LHH representing multiple disciplines have been accepted to the CAHF Leadership Academy Program, for 2023. LHH has also created an external-facing effort to recruit students for a new graduate training program shared with local colleges. This is establishing a pipeline program for recruiting and training nursing staff to provide the best quality care as they newly arrive to LHH. And in August 2022, the entire LHH workforce of almost 1,500 personnel participated in in-person trainings that involved focused education key topics as well as an in-person test where each attendee had to demonstrate proficiency (*e.g.*, donning and doffing PPE appropriately in front of an instructor) before passing the training. Specifically:
 - Week 1 – 1,215 staff participated in training on infection control, administration/emergency services, and freedom from abuse;
 - Week 2 – 1,212 staff participated in training on resident rights, quality of life/nursing, and behavioral health;
 - Week 3 – 1,216 staff participated in training on quality assurance, physical environment, and food and nutrition; and
 - Week 4 – 296 staff participated in training on medication administration, care plan/assessment, and survey preparation (fewer staff participated in these trainings since the facility tailored the training to only those staff members who would be engaging in those topics as part of their job description).

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- **Emergency Preparedness Program:** LHH has already initiated multiple improvements that strengthen the emergency preparedness program. For example, LHH launched the Everbridge Emergency Notification System. LHH is also now a member of the City and County of San Francisco's Emergency Preparedness Healthcare Coalition—a preparedness program that works with medical facilities and healthcare organizations in San Francisco—and has been participating in meetings with the Skilled Nursing Facility COVID-19 Coordination subgroup and the Hospital Preparedness Partnership subgroup (an acute care hospital general planning group). In the last 6 months, LHH has engaged in disaster activity exercises such as an AT&T outage, a heat wave, and a power outage. The facility has also restarted the Emergency Preparedness Committee, which includes multidisciplinary representation from Medicine, Nursing, Pharmacy, and all Support Services; thoroughly reviewed all Emergency Preparedness documentation; and updated all of the Emergency Preparedness resource binders.

On a more comprehensive level, LHH has been assessing each unit's "survey readiness" on an ongoing basis since Summer 2022. LHH leadership and its consultants observed all LHH units during multiple rounds, 24/7, across all shifts, using a tool based on the Association for Professionals in Infection Control and Epidemiology (APIC) environmental rounding worksheet. To complete the assessment, different teams focused on hand hygiene (HH), IPC, and environment of care (EOC), as well as observing for severe non-regulatory compliance issues (defined as any individual finding that could jeopardize recertification independent of the rate of compliance in HH, IPC, and EOC). In early August when the assessments began, no units were deemed survey ready. But the number of survey-ready units has steadily increased over the last several months, with six of 13 units achieving that milestone by mid-November 2022. LHH has also made significant progress in addressing the 101 findings/tags identified in the Summer 2022 mock survey conducted by one of LHH's consultants. By mid-November 2022, LHH had verified resolution of 63% of those findings/tags. To be considered "resolved," LHH required that proof of sustained compliance be provided to its Quality Management team as well as a comprehensive review by a trio of leaders, including regulatory consultant experts. For the remaining 37% of the findings/tags, LHH had already implemented a plan of correction but was still in the process of monitoring sustained compliance and confirming improvement sustainability.

Through these and other improvements LHH has made since decertification, LHH has made significant strides in improving the quality of resident care and addressing previously identified deficiencies and areas of concern.

These successes were reflected in weekly dashboards that LHH management shared with all LHH staff from early August through mid-November, copies of which are attached to this letter as Exhibits 1-14. Importantly, these dashboards also show that LHH was not shying away from its challenges. While celebrating notable achievements and progress, the dashboards also put a spotlight on areas of concern that required focused improvement efforts.

These successes and ongoing challenges were also reflected in the findings by CMS and CDPH in the recent monitoring survey. CMS did not identify any deficiencies in 69 of the 101 areas—more than two-thirds—where deficiencies had been identified in the mock survey. And in many of the areas where deficiencies were noted, LHH was aware it had not yet achieved substantial compliance and was still working on ensuring compliance with its plans of correction.

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The survey also identified deficiencies that were not included in the mock survey results. But LHH is well positioned to address all of these deficiencies through the Root Cause Analysis and Action Plan. While still pending CMS's final approval, the Root Cause Analysis and Action Plan contain hundreds of specific milestones with concrete deliverables that will help the facility address the previously identified deficiencies and remedial actions. And, the Action Plan will be updated with new milestones to address the deficiencies identified in the monitoring survey.

As noted above, the Action Plan's milestones are well underway, and newly identified areas of concern have been, and will continue to be, addressed expeditiously. Indeed, corrective action began in real time during the December monitoring survey. For example, when the surveyors identified a significant concern about wound care, LHH acted immediately. Every nurse manager stayed after hours for an in-service training led by the Chief Nursing Officer, and within 24 hours, LHH assessed every single resident in the facility using the Braden scale. LHH has now deployed clinical nurse specialist from Zuckerberg San Francisco General Hospital who have Wound, Ostomy, Continence Nursing (WOCN) certification to see and treat all identified wounds at LHH. Also, LHH has posted a job opening for two wound care clinical nurse specialists.

Similarly, while CDPH issued an Immediate Jeopardy finding concerning LHH's response to a fire alarm on December 6, 2022, LHH successfully implemented an approved plan of action to correct the causes of that Immediate Jeopardy finding. LHH provided a revised plan of correction in response to the Life Safety Code and Emergency Preparedness monitoring survey to CDPH on Sunday, January 8, 2023, along with evidence that LHH had already implemented most of the corrections described in the plan.

In short, LHH has made significant progress toward recertification. Dozens of deficiencies have been addressed. The recent survey confirmed that other areas—many of which LHH had correctly identified as not yet fully resolved—require additional attention, but LHH has taken, and will continue to take, swift action to address these areas. LHH is confident that it will be able to continue the success it has achieved so far in rectifying more than two-thirds of the previously identified deficiencies.

Given the improvements that LHH has made and its progress towards recertification, a continued pause on transfers and discharges is appropriate. LHH has every confidence that it will be able to implement the Action Plan by May 2023, and obtain recertification by November 2023. Transfers should not resume now given the potential harm transfers could cause to LHH's residents—a harm that is unnecessary given LHH's progress towards recertification.

Because of its size, history, amenities, and patient population, LHH is a unique facility in the country, providing critical care for many of San Francisco's most vulnerable residents, and its residents would be best served by avoiding unnecessary transfer trauma and remaining at LHH through the recertification process.

LHH provides skilled nursing and rehabilitation services to San Francisco's most vulnerable residents, including seniors, adults with disabilities, and others who cannot care for themselves. LHH provides the last safety net for many residents who must, or wish to, receive care in the Bay Area near friends, family, and their communities. For instance, LHH provides the only dedicated skilled nursing facility for HIV/AIDS patients in the San Francisco Bay Area. LHH is committed to aiding the underserved, fulfilling a critical need for San Francisco's most vulnerable. LHH's nearly 1,500 clinicians and staff members dedicate themselves to high-quality, individualized care for the facility's residents, including by providing group living facilities for people with developmental disabilities, treatment for multiple sclerosis, Parkinson's

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and other degenerative diseases, therapeutic services for traumatic brain injuries, services for people with psychosocial difficulties, end-of-life care emphasizing comfort and dignity, and the complex system of care required for people with multiple diagnoses.

LHH's overriding concern, which we know CMS shares, is to ensure resident health, safety, and welfare. In this case, LHH's residents would be best served by remaining at LHH. Transferring residents inevitably disrupts a resident's daily routines and care, which can cause significant health complications and can trigger psychological distress. If transfers resume, elderly residents with dementia will face the confusion, disruption, and ordeal of being transferred away from their long-term caregivers for reasons they might not understand. For elderly residents, maintaining familiarity with people, place, and surroundings is important for their orientation and stability. For all residents, a forced move against their wishes is disruptive and distressing.

Many residents at LHH are proud to consider the facility their home. Creation of a "home-like" environment is built on relationships, person-centered care, and a psychosocial setting that welcomes each resident and makes the resident comfortable. A majority of LHH's residents have been at Laguna Honda for over a decade and the staff serve as their surrogate family. That nurturing environment is one that cannot be replicated. Transferring residents from a stable environment to an unknown environment disrupts their physical health and emotional well-being. This causes stress and anxiety for residents, their loved ones, and staff at Laguna Honda.

The California Legislature has declared that "the transfer trauma which accompanies the abrupt and involuntary transfer of patients from one nursing home to another should be avoided when reasonable alternatives exist." Cal. Health & Safety Code § 1325. Here, a reasonable alternative exists because residents can obtain quality care at LHH. Given that LHH has made considerable progress and expects to obtain recertification in the coming months, it is unreasonable to require LHH to transfer residents now, only to have LHH bring those same residents back to their homes at LHH following recertification.

The harm that residents could face from being unnecessarily transferred from LHH is compounded by the fact that there are few skilled nursing beds available for LHH's residents in the Bay Area, or surrounding communities. Therefore, it is likely that LHH would be forced to transfer patients to counties outside of the Bay Area or even out of state. Transferring patients hundreds of miles from their home would uproot them from their family and friends, as well as removing them from the only caregivers they know.

Finally, LHH provides specialized care for patients with complex needs and includes services and amenities that are not available elsewhere. The population Laguna Honda serves is primarily either low-income or extremely low-income with diverse issues, including elderly patients and those with behavioral health issues, substance use and addiction disorders, and other complex conditions. The quality of care these patients with specialized needs require is unlikely to be replicated at another facility. For instance, other facilities do not have primary care physicians who are assigned to, and rounding at, the facility on a daily basis, a psychiatry department that provides SUD and behavioral health treatment, and a dedicated physical therapy unit. Since LHH is part of the San Francisco Health Network, residents also receive care from providers within the network. As mentioned above, LHH is the only HIV/AIDS skilled nursing facility in the Bay Area, and also provides a nationally-recognized program for memory care and an award-winning restorative care program.

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Extending the pause of transfers and discharges is consistent with federal law.

Extending the pause on transfers and discharges is not only consistent with the Settlement Agreement as we describe above, but it is also consistent with 42 C.F.R. § 489.55(b). Section 489.55(b) provides:

The Secretary may, as the Secretary determines is appropriate, continue to make payments with respect to residents of a long-term care facility that has submitted a notification of closure as required at § 483.70(1) of this chapter during the period beginning on the date such notification is submitted and ending on the date on which the residents are successfully relocated.

Federal regulations do not mandate that closure occur within any set period and allow the Secretary of Health and Human Services discretion to continue funding until the last resident is safely transferred or discharged from the facility. Here, LHH is not asking CMS to change the date on which federal funding will end or change the closure date for LHH under the Settlement Agreement. Rather, consistent with the letter and spirit of the Settlement Agreement, LHH is simply asking CMS to continue to protect LHH residents from involuntary transfers as LHH makes the improvements necessary to obtain recertification.

Thank you for considering this request. We ask that you provide a written response to our letter by close of business Pacific Daylight Time on Friday January 27, 2023, and we are available to discuss this matter further. Please direct any questions to Deputy City Attorneys Tara Steeley (Tara.Steeley@sfcityatty.org), Sara Eisenberg (Sara.Eisenberg@sfcityatty.org), and Henry Lifton (Henry.Lifton@sfcityatty.org).

Very truly yours,

DAVID CHIU
City Attorney

s/Tara M. Steeley

TARA M. STEELEY
Deputy City Attorney

cc: **VIA EMAIL**
Jean.Ay@cms.hhs.gov
Femi.Johnson@hhs.gov
Grant.Colfax@sfdph.org
Naveena.Bobba@sfdph.org
Roland.Pickens@sfdph.org
Henry.Lifton@sfcityatty.org
Sara.Eisenberg@sfcityatty.org